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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.06.2017

CORAM :
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(NPD)(MD)No.402 of 2005
and
CMP(MD)No.1536 of 2005

1)N.CT.N.VR.Veerappa Chettiar son
Ramanathan Chettiar (Died)
2)N.Veerappan
3)N.Muthu
4)RM.Nachal
5)RM.Nachiappan
6)RM.Valliammai
(Petitioners 4 to 6 are brought on record as LRs of the deceased 1st petitioner vide order dated 10.06.2015 made in M.P.1 to 3/15 in CRP.402/05) ... Petitioners

vs.

1)Sivagami
2)Narayanan
3)Vallikkannu
4)V.Umayal
5)N.Valliammai
6)K.Muthali @ Muthu
7)A.Alamelu
8)N.Meenakshi
9)M.Visalakshi ... Respondents

Petition filed under Section 115 of the Civil Procedure Code, against the order dated 09.11.2004 in E.A.No.113/1982 in E.P.No.39/1970 in O.S.No.81/1096 on the file of Subordinate Judge, Devakottai.

For Petitioners : Mr.ARL.Sundaresan, Senior Counsel for AL.Ganthimathi
For R1 to R3 : Mr.V.Raghavachari
For R4 to R9 : No appearance

ORDER

This revision petition is filed by the 30th defendant and legal representatives of 29th defendant in the suit of the year 1921.

2.The short point involved in this case is that the revision petitioners have pleaded discharge of decreetal amount to one of the decreetal holders. Hence, they sought dismissal of the EP. This issue has gone upto the High Court and in CRP.No.996/1992,

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this Court has set aside the order passed in E.A.No.26/1992 and also permitted the present revision petitioners to agitate E.P.No.39/1970. The revision petitioners have filed their counter on 21.03.2001 and the same has been taken note by the Court below in the daily order dated 20.04.2001 as under:-

> ''*Counter of R4 filed. R3 to R5 to R11 adopts the counters of R4, R2 Notice through Court not returned. Await 27.4.2001*''

3.However, by efflux of time and transfer of case from Sub Court, Devakottai, to Additional District Munsif, Karaikudi, when the matter was taken up on 21.07.2004, the Court below has failed to take note of the counter filed by R4 to R11 as early as 21.03.2001 and had passed the following order:-

> ''*Counter of R4 to R11 not filed. Already R1 died and R2 set exparte, and R3 died. But case is pending for a long time. For Counter of R4 to R11. R4 to R11 called absent. No representation. For R4 to R11 considering the long pending nature of the case and not filing counter R4 to R11 set exparte. Delivery by 19.8.2004.*''

4.The only point canvassed by the counsel for the revision petitioners is that when the counter has already been filed and available on record, the order passed by the learned Additional District Munsif, Karaikudi, ordering delivery on the ground that R4 to R11 has not filed counter is ex facie illegal and liable to be set aside.

5.This Court to verify the above contention, called for the original records from the Court below and has found that the submission made by the revision petitioners is correct. Therefore, the order of delivery passed on 21.07.2004 is liable to be set aside and accordingly set aside.

6.The learned counsel for the respondents expressed his apprehension that EP was filed in the year 1970 and till date, the decree holders are not able to see the colour of the coin. If the matter is remanded back to the Execution Court for adjudication, again there will be a spate of petitions which will make the decree un-realisable.

There is some force in the said submission made by the counsel for the respondent.

7.Counsel for respondent also requested this Court to decide the matter on merits. This Court has its own reservation in entertaining the said request. However, to address the apprehension of the counsel for the respondents, it is suffice to direct the Execution Court to consider the counter filed by the revision petitioners and any document relied by the parties in E.A.No.113/1982 in E.P.No.39/1970 and pass appropriate orders at

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the earliest not later by 30.07.2017. If the revision petitioners do not co-operate to complete the enquiry by the said date, the Execution Court may stop the proceedings in E.A.113/1982 and proceed further in E.P.39/1970 without affording any more accommodation to the revision petitioners.

With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Sub Court,
Devakottai.

+1cc to Mr.A.L.Gandhimathi,Advocate,SR.61687
+1cc to Mr.V.Raghavachari,Advocate,SR.61838
+1cc to Mr.D.Srinivasaraghavan,Advocate,SR.61738

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